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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[EAC 08 040 79809]

Office: VERMONT SERVICE CENTER

Date: SEP 01 2009

IN RE: Applicant:

[REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT;

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the director erred in finding that the applicant is not eligible for late initial TPS registration. Counsel also contends that the applicant has submitted evidence of physical presence that established his prima facie eligibility for TPS. The applicant also submits evidence in an attempt to establish his continuous residence and continuous presence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

- (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on October 19, 2007. The applicant submitted his initial TPS application on November 26, 2001 under receipt number WAC 02 055 52064. On September 26, 2002, the Director, California Service Center, denied this application as abandoned because the applicant failed to respond to a request for evidence to establish prima facie eligibility for TPS. There is nothing in the record to indicate the applicant filed a motion to reopen the director's decision. The applicant filed a subsequent TPS application on September 12, 2002 under receipt number WAC 03 035 54147. The Director, California Service Center, treated this application as a re-registration application and denied it on August 26, 2004 because the applicant's initial TPS application was denied and the applicant was therefore ineligible for TPS re-registration. There is nothing in the record to indicate the applicant appealed the director's decision. The applicant filed a subsequent re-

registration application on April 27, 2005 under receipt number WAC 05 208 90474. The Director, California Service Center, denied this application on August 16, 2005, because the applicant's initial TPS application was denied and the applicant was therefore ineligible for TPS re-registration. The applicant filed an appeal of this decision on September 2, 2005. The AAO dismissed that appeal on October 31, 2006.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On August 18, 2008, the applicant was informed that he had failed to establish his eligibility for late initial registration and had failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. The director stated that the applicant had been informed of the reasons for denying his TPS application on September 26, 2002 and he had not provided any new and compelling evidence that overcomes the reasons for denying the initial TPS application. Therefore, the director denied the application.

On appeal, counsel states that the director erred in finding that the applicant is not eligible for late initial TPS registration. According to counsel, an application for TPS is an application for relief from removal pursuant to 8 C.F.R. § 244.2(f). However, counsel's contention that a TPS application is a change of status application is incorrect. Change of status, by regulation, is limited to a change of one nonimmigrant classification to another. TPS does not render nonimmigrant status to the applicant. Consequently, it does not qualify as a change of status application. Moreover, taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. However, the provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that Temporary Protected

Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

In support of his TPS applications, the applicant submitted the following:

1. Copies of his birth certificate, with English translation and an El Salvadoran Identification Card.
2. Copies of a 2002 W-2, Wage and Tax Statement in the name of [REDACTED] with Social Security number [REDACTED] 2002 and 2003 Form 1040A, U.S. Individual Income Tax Return in the name of [REDACTED] with Social Security number [REDACTED] W-2, Wage and Tax Statements for the years 2004, 2005 and 2006 and 2004, 2005 and 2006 Form(s)1040A in the name of [REDACTED] with Social Security number [REDACTED]
3. Statements from [REDACTED] and [REDACTED]
4. Copies of money transfer receipts dated March 10, 2001 with the sender's name [REDACTED] April 22, 2001 with the sender's name [REDACTED] and undated receipts with senders' names [REDACTED] and [REDACTED] and an Earnings Statement in the name of [REDACTED] with Social Security number [REDACTED]
5. Copies of hand-written rent receipts dated February 1, 2001, April 1, 2001, May 1, 2001, August 1, 2001, September 1, 2001 and November 1, 2001.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits copies of 2002 and 2003 Form W-2s in the name of [REDACTED] with Social Security number [REDACTED] and 2007 Form 1040As and 2007 Form W-2s in the name of [REDACTED] with Social Security number [REDACTED].

The birth certificate and Salvadoran Identification Card indicates the applicant's name and identity as [REDACTED]. However, as discussed by the director, the applicant provided documentation in which he used the following names and Social Security numbers: [REDACTED]

using Social Security Number [REDACTED]
[REDACTED] using Social Security number [REDACTED] using Social Security number [REDACTED] and [REDACTED] using Social Security number [REDACTED]
These discrepancies have not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Counsel contends that the applicant was not afforded the opportunity to review the evidence or explain or rebut the director's findings. However, the applicant could have taken the opportunity on appeal to address these discrepancies and his failure to establish that he and these individuals are one and the same.

[REDACTED] states that she has known the applicant since December 2000. However, this statement has little evidentiary weight or probative value. The statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. [REDACTED] for Jackpot Harvesting, states that the applicant was hired on March 6, 1999 as a laborer. However, this statement also lacks evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. Similarly, the hand-written rent receipts are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The tax documents indicate the applicant worked during those years, but this evidence can not establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the TPS application was filed.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.